IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 115 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANTABEN GOVINDLAL PATEL

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR R.K PATEL for Mr. K.C.Patel for Petitioner

MR B B.Naik with Mr MANISH R BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 14/11/2000

CAV JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

At the instance of the assessee under section 256 (1) of the Income tax Act,1961, the following question of law has been referred to this court for answer:

"Whether on the facts and in the circumstances of the case, the tribunal was right in law in holding that the benefit of section 54E and section 155 (10B) is not available to the assessee to whom full capital gains accrued in assessment year 1974-75 even though in the present case the enhanced compensation was admittedly received on22.11.1978 and 30.1.1979 when the provisions of both the sections had already been brought on statute book ?"

Under section 45 of the Act, any profit or gain arising from transfer of a capital asset is chargeable to income tax under the head `capital gain' by treating the same as income of the previous year in which the transfer took place. Section 54E was introduced in the Act by Finance Act 2/1977 with effect from 1.4.1978 for the purpose of exempting capital gain from tax, if sale proceeds of the asset are invested within six months in shares, bank deposits, units of the Unit Trust or other `specified assets'.

Where transfer of capital asset is by way of compulsory acquisition under any law, in accordance with the normal procedure prescribed, capital gain is to be computed by taking compensation awarded by the Government as full value of consideration even though adequacy of compensation is questioned by the assessee in higher court or tribunal. On additional compensation being awarded to the assessee, earlier computation of compensation is required to be revised. To enable the tax authorities to do the same, sub-section (7A) was added in section 155 with effect from 1.4.1974. Under the said provision, award of additional compensation, capital gain earlier computed on the basis of award of original compensation, can be recomputed. This provision by insertion of sub-section (7A) to section 155 was introduced by Finance Act of 1978, but it was given retrospective effect from 1.4.1974. By the same Finance Act of 1978, sub-section (10B) to section 155 was introduced not retrospectively but prospectively from 1.4.1978 which enables the assessee to invest or deposit whole or part of the additional compensation in any specified assets for the purpose of claiming benefit of exemption from payment of tax on capital gain.

Keeping in mind the above legislative changes, the relevant facts leading to this Reference on the question framed, may now be stated. Certain lands owned by the assessee at Vadej in the Municipal limits of Ahmedabad were acquired by the Government during the previous year to assessment year 1974-75.The assessee had received compensation in the sum of Rs. 2,46,663/-. The Income tax Officer in the proceedings under section 147 of the Act by his order dated 18.7.1979 assessed the capital gain on the above mentioned amount of compensation received by the assessee.

Before passing of the order of assessment, the assessee had approached the civil court claiming enhancement of quantum of compensation. The civil court vide order passed on 23.12.1977 awarded additional compensation in the sum of Rs. 83,074/which was received by the assessee in two instalments of Rs. 73, 299/- on 22.11.1978 and Rs. 9,775/- on 30.1.1979. These payments were received by the assessee before the order of assessment for capital gain was passed by the ITO under section 147 of the Act on 18.7.1979. On discovery of payment of additional compensation, ITO issued notice to the assessee for recomputation of capital gain on the compensation received on acquisition of the land. The recomputation of capital gain was sought to be done under section 155 (7A) which was introduced by the Finance Act of 1978 with retrospective effect from 1.4.1974.

In reply, the assessee stated that he had made requisite deposits, as required by section 54E (3) of the Act, of Rs. 75,000/- in fixed deposit with Union Bank on 28.2.1979 and Rs. 10,000/- already deposited earlier with Union Bank on 30.5.1978. On these deposits, the assessee intended to take benefit of the amended provisions contained in sub-section (10A) of section 155 which was brought into force from 1.4.1978.The ITO refused to grant any benefit of exemption from capital gain tax to the assessee on the additional compensation received by her on the ground that section 54E (3) as inserted by the Finance Act No.2/ 1977 came in force with effect from 1.4.1978 and the said provision did not apply to the capital gain assessable for the assessment year 1974-75. The ITO also rejected the claim of the assessee for exemption from tax by holding that the investment made did not fulfil the conditions of section 54 E (3) of the Act. With this latter part of his order containing the ground of rejection of assessee's claim of exemption from tax on capital gain, we are not concerned as it is not a question referred to us.

The reasoning of the ITO that benefit of investment or deposit in accordance with section 155 (10B) of the Act is not available on capital gain assessable for the assessment year 1974-75, was also confirmed by the Commissioner of Income tax

(appeals).

The Income tax Appellate Tribunal rejected the appeal of the assessee.

In the opinion of the tribunal, by giving retrospective effect from 1.4.1974 only to section 1255 (7A) to enable the assessing officer to recompute capital gain on award of enhanced compensation, and not giving such retrospective effect to the provision of section 54 E(3) and section 155 (10B) of the Act for grant of exemption from tax on specified deposits or investments, the legislative intent is clear that benefit of exemption from capital gain tax on specified deposits or assets was not to be conferred on pre-1978-79 gains and to be granted only to post-1978-79 gains. The reasoning of the tribunal is that if the intention would have been otherwise, the legislature could have given retrospective effect also to section 54 E(3) and section 155 (10B) as retrospective effect was given to section 155 (7A). It is better to reproduce the relevant part of the opinion of the tribunal:

"Possibly, the ambiguity has arisen on account of the opening words of Section. 155 (10B) "where for any assessment year". Actually, the legislature did not think of section 54E mentioning the assessment year as the provision itself came into operation from 1.4.1978. It is true that the legislature, anxious to secure investments in banks, etc., could have thought of giving the benefit in respect of pre-1978-79 gains if additional compensation was received after the new provision came into force, but that such an intention was not there , is clear from the distinction made between 155 (7A) relating additional compensation to original capital gains operative from 1.4.1974 on the other hand and 155 (10B) and 54E which became effective only from 1.4.1978 on the other hand, If section 155 (10B) is taken as purely procedural and hence applicable to additional compensation received after the date are pertaining to any assessment year, it would cause an invidious and unwarranted discrimination between two assessees whose properties were acquired on the same day, but who received additional compensation on different day (one before and after 1.4.1978) for reasons beyond the control of the respective assessees. Such a consequence could not have been contemplated. We accordingly hold that the benefit of 54E and 155 (10B) is not available to the assessee to whom full capital gains accrued in 1974-75."

In reaching the above conclusion to deny benefit of provision of section 54 E (3) and section 155 (10B) of the Act, the reasoning of the Tribunal is that additional compensation is part of the original compensation and was assessable for computation of tax on capital gain accruing in the assessment year 1974-75.The second part of the reasoning in rejecting the claim of exemption to the assessee is that only section 155 (7A) which enables the tax authorities to recompute capital gain in the event of award of enhanced compensation, has been given retrospective effect from, 1.4.1974, but the beneficial provisions of exemption from capital gain tax on making deposits or investment in specified assets contained in section 54 E (30 and section 155 (10B) of the Act have been given prospective effect from 1.4.1978. Capital gain is required to be recomputed in exercise of the power under section 155 (7A) on the award of enhanced compensation but the assessee would not be entitled to claim benefit of exemption from tax on specified investments or deposits under section 155 (10A) read with section 54 E (3).

Learned counsel Mr. R.K.Patel appearing for the assessee questioned the correctness of the reasonings and conclusion reached by the Tribunal. The argument on behalf of the assessee is that if grant of enhanced amount of compensation enables recomputation of tax on capital gain, benefit of exemption from tax on specified deposits and investments cannot be denied because provisions of section 54 E (3) and section 155 (10B) have prospective operation. Reliance is placed on a direct decision of the Andhra Pradesh High court in the case of CIT vs. Smt. Roda Mistry (1998) 231 ITR 12 in which earlier Division Bench decision of the same court in S. Gopal Reddy vs. CIT , (1990) 181 ITR 378 has been referred and relied. Learned counsel appearing for the assessee submits that in the case of CIT vs. J.H. Gotla, (1985) 156 ITR 323,the Supreme court has observed that `though equity and taxation are strangers, attempt should be made that these do not remain always so and if construction results in equity rather than injustice, then, such construction should be preferred to the literal construction'. It is submitted that the amount of compensation subsequently enhanced can only be invested or deposited in the specified assets after the said amount is received, and merely because on the amount of original compensation received, the assessment was completed on capital gain, the assessee should not be denied benefit of claiming exemption from capital gain tax on deposit of the amount of compensation subsequently enhanced and received. Any other conclusion would lead to an absurd result that such enhanced compensation can be brought to tax as capital gain on

recomputation and opening of original assessment but it would be of no avail to the assessee for claiming exemption by making specified deposits and investments. He submitted that `in case of doubt with regard to interpretation, such interpretation which is favourable to the assessee should be adopted'. Reliance is placed on CIT vs.J.K.Hosiery Factory, (1986) 159 ITR 85 (Supreme court).

Learned counsel appearing for the revenue in his reply, supported the reasonings of the tribunal and stated that provisions of section 54 E (3) and section 155 (10B) being prospective are enforceable from 1.4.1978, and the tribunal committed no error in rejecting the claim of the assessee of exemption from tax on capital gain on enhanced compensation deposited or invested in specified assets. It is argued that this court should not, on settled principles of interpretation, permit grant of retrospective operation to the provisions of section 54 E(3) and section 155 (10B) when such is not the intention of the legislature.

After hearing the learned counsel for the parties and carefully examining the reasoning and conclusions contained in the order of the Tribunal, in our opinion, the relevant provisions containing the power of redetermination of capital gain on enhanced amount of compensation and granting benefit of exemption from tax on capital gain on such amount should be so harmoniously construed as to carry out the legislative intention in the best possible manner.

Section 54E(3) and Section 155(10B) were introduced to the Act because as common experience it was found that in acquisition proceedings of properties, original compensation is enhanced after much delay on decision of Appeals by Courts or Tribunal. Where original compensation is enhanced, the additional amount of compensation is required to be taken into consideration for recomputation of tax on capital gains.

With a view to augment government deposits and specified investments, the Legislature has though it fit to enact provisions which encourage assessees, who may be liable to pay tax on capital gains, to make specified deposits and investments for seeking exemption from tax on capital gains. These provisions were intended as an incentive to the assessee for seeking exemption from payment of tax on capital gains.

The enhanced amount of compensation, for the purpose of getting the benefit of exemption from tax on capital gains, can be deposited/invested only after such enhanced amount of compensation is actually received.

True it is, that Section 155(7A) has been given retrospective

operation from 1-4-1974 to enable the Department to recompute capital gains after the enhanced compensation is awarded to the assessee. The retrospective operation given to Section 155(7A), cannot, however, be taken as a good ground or reason to hold that on such enhanced compensation, benefit of Section 54E(3) and Section 155(10B) on specified deposits or investments, would not be available to the assessee as the two latter provisions have prospective effect from 1-4-1978.

The Legislature in giving retrospective effect to Section 155(7A) which enables the tax authorities to recompute capital gains tax on enhanced amount of compensation subsequently awarded and received by the assessee, and giving prospective operation to Section 155(10B) and Section 54E(3), can legitimately have no intention to deny benefit of exemption from tax to the assessee willing to make deposits and investments in the `specified assets'. It is only in respect of those cases where the assessee has not availed benefit of exemption from tax by a specified deposits or investments, it became necessary to confer power on the authorities to recompute tax on capital gains on the enhanced amount of compensation. By retrospective effect to Section 155(7A) the authorities thus have been empowered to recompute capital gains in relation to cases commencing from assessment years 1974-75. If the enhanced amount of compensation, on the date of such proposed recomputation or reassessment, had been invested in specified deposits or investments, after coming into force of Section 54E(3) and Section 155(10B), benefit of such investments and deposits must be given to the assessee. The two Sections 54E(3) and 155(10B) have prospective operation, in the sense, that exemption from tax is available on the enhanced amount of compensation if invested or deposited after 1-4-1978 in `specified assets'.

The reasoning of the Tribunal does not appear to be sound and just that additional compensation is part and parcel of the original compensation and if the original compensation itself cannot get benefit of Section 54E(3), such benefit cannot be allowed to additional/enhanced compensation. Such interpretation and reasoning of the Tribunal militates against the prospective operation of Section 54E(3) and 155(10B). The three sections under consideration have to be construed harmoniously to determine scope and effect of their joint operation. The assessment of capital gains made on initial payment of compensation has been permitted to be revised by the enabling provisions contained in Section 155(7A) and they have been brought into force retrospectively from 1-4-1974. In the Course of making such recomputation or reassessment for capital gains, if the enhanced amount of compensation has been invested or deposited after 1-4-1978 i.e. the date from which Section 54E(3) and 155(10B) have been given prospective operation, the

benefit of exemption from tax should flow to the assessee.

By interpreting, therefore, the provisions in the three Sections in the harmonious manner thus, we have attempted to only give full effect to legislative intention of encouraging assessees, liable to tax for capital gains, to make specified investments and deposits and thereby augment Government revenue. The interpretation, as has been adopted by the Tribunal, would have unjust result. If the enhanced compensation is liable to be reassessed for computation of tax on capital gains, on such enhanced amount, the assessee should be able to claim exemption by making specified investments and deposits.

In the case before us, the amount of enhanced compensation has been deposited or invested after 1-4-1978 and if there is full compliance of other provisions of Section 54E(3) and Section 155(10B), the assessee can legitimately be allowed to claim exemption from tax on capital gains.

The reasoning of the Tribunal that there is likelihood of discriminatory situation being created between a class of assessees who received additional compensation before 1.4.1978 and assessees who received compensation subsequent to the above date, in the matter of getting benefit of the provisions of investments in specified assets does not commend to us. The legislature has provided 1.4.1978 as the cut off date for prospective operations of the provisions providing benefit of investments and deposits in specified assets. Merely because of some fortuitous circumstance of receiving additional compensation prior to or after 1.4.1978, it cannot be held that there is invidious discrimination between a class of assessees and other class of assessees. Such is the result always of a legislation which is brought into force from a particular date.

For the foregoing reasons, we answer the question in favour of the assessee and against the Revenue.

The Reference is disposed of accordingly.

There shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(A.R. DAVE, J)

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